



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Michael A. Hardy, Esq.
Scheurer & Hardy
1674 Broadway, 7th Floor
New York, New York 10019

DEC 11 2008

RE: MUR 5408
LaVan Hawkins

Dear Mr. Hardy:

On May 24, 2005, you were notified that the Federal Election Commission found reason to believe that your client, LaVan Hawkins violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). After considering the circumstances of the matter, the Commission determined on December 3, 2008 to take no further action as to LaVan Hawkins, and take no action as to the Hawkins Food Group, and closed the file as it pertains to them.

The Commission reminds your clients that making excessive or prohibited in-kind contributions to a federal candidate or his authorized political committee is a violation of the Act. Your client should take steps to ensure that this activity does not occur in the future.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,


Camilla Jackson Jones
Attorney

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: LaVan and Wendy Hawkins
Hawkins Food Group

MUR: 5408

I. INTRODUCTION

On May 3, 2005, the Commission found reason to believe that LaVan and Wendy Hawkins made excessive contributions to Alfred C. Sharpton ("Sharpton") and his principal campaign committee, Sharpton 2004 and Andrew A. Rivera, in his official capacity as Treasurer, (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) ("Sharpton 2004" or the "Committee"), in violation of 2 U.S.C. §§ 441a(f). The Commission authorized an investigation, after which the Commission found reason to believe that Hawkins Food Group, Inc. ("Hawkins Food Group") made prohibited contributions to Sharpton 2004, in violation of 2 U.S.C. § 441b.

The Commission has opted to exercise its prosecutorial discretion and take no further action as to LaVan and Wendy Hawkins and, the now defunct, Hawkins Food Group.

II. FACTUAL AND LEGAL ANALYSIS

Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in the 2004 primary election. LaVan Hawkins, owner of the now defunct Hawkins Food Group, a Detroit based corporation, and his wife Wendy Hawkins, held a fundraising event for Sharpton's candidacy on February 7, 2003. See Hawkins Joint Resp. at 2.¹

¹ The Hawkins made no monetary contributions to the Committee at the party, but on March 13, 2003, LaVan and Wendy Hawkins each contributed the statutory maximum of \$2,000 to the Committee.

a. Excessive Contributions by LaVan and Wendy Hawkins

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The Act provides that all in-kind contributions must be disclosed and must comply with the limitations and prohibitions of the Act. *See* 2 U.S.C. §§ 434(b) and 441a(a). Specifically, the Act states that no person shall make contributions to a candidate for federal office or his authorized political committee, which in the aggregate, exceeds \$2,000, *see* 2 U.S.C. § 441a(a)(1)(A), and no candidate or political committee shall knowingly accept contributions in violation of the limitations and prohibitions of the FECA. 2 U.S.C. § 441a(f). When one hosts a fundraising event to support a candidate, the cost of voluntarily provided invitations, food and beverages are considered in-kind contributions if they exceed \$1,000 with respect to any single election. *See* 11 C.F.R. § 100.77.

The investigation established that the expenses associated with the Hawkins fundraising event resulted in an excessive in-kind contribution by LaVan Hawkins totaling approximately \$9,239.² By failing to reimburse the Hawkins for the cost of the fundraiser, the Committee knowingly accepted the excessive contribution, in violation of Section 441a(f). The investigation established that the fundraising event was planned, hosted and paid for by LaVan Hawkins, and that Wendy Hawkins had no actual role in the event. Hawkins Joint Resp. at 2; Wendy Hawkins August 23, 2007 Supplemental Response ("Wendy Hawkins Supp. Resp.") at 1. Although the event was held in their home and Wendy Hawkins' name appears on the hostess and catering vendor invoices,

² Because the Hawkins were unable to provide invoices for all of the party's expenses, this figure is calculated using the estimated values of food and beverages, rentals, catering staff, and services provided by a professional personal chef, valet and models, that were obtained from businesses providing comparable services in the Atlanta area. This excessive contribution amount includes a deduction of the \$1,000 in-kind contribution that is permissible by statute for such items. *See* 11 C.F.R. § 100.77. The calculation for the event's cost does not include the \$325 worth of desserts purchased by Mrs. Hawkins.

the expenses associated with the event were paid by LaVan Hawkins. Additionally, only LaVan Hawkins' name appears on the Committee's fundraiser invitation. *Id.*³

Accordingly, the Commission exercises its discretion to take no further action with respect to Wendy Hawkins.

In June 2005, LaVan Hawkins was convicted of federal perjury and wire fraud charges stemming from a corruption scheme involving the payment of gifts and bribes to the Philadelphia city treasurer in exchange for city contracts. Mr. Hawkins was sentenced to 33 months of incarceration, which he is currently serving in a federal penitentiary, and his conviction was affirmed by the Third Circuit Court of Appeals in August 2007. His attorney also represents to the Commission that his client's personal assets and those of his business, Hawkins Food Group, were seized by the Department of Justice upon his arrest. Given that Hawkins is currently incarcerated and without assets and any source of income, the Commission, as a matter of prosecutorial discretion, decided to take no further action with respect to LaVan Hawkins' violation.

b. Prohibited contributions by the Hawkins Food Group, Inc.

The Act provides that expenditures for travel by any individual related to the campaign of a candidate seeking nomination for election to the office of President shall be qualified campaign expenses and be reported by the candidate's authorized committee as an expenditure. 11 C.F.R. § 9034.7(a). Moreover, the Act prohibits any corporation from making contributions in connection with an election for federal office. 2 U.S.C. § 441b(a). Corporate "contributions" or "expenditures" include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or

³ Wendy Hawkins also states that during the time period surrounding the event she and Mr. Hawkins were going through a period of separation and that he rarely spent time in their Atlanta home. Hawkins Joint Resp. at 2. The Hawkins divorced on September 20, 2004.

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anything of value . . . to any candidate, committee, or political party or organization, or any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1).

LaVan Hawkins provided Sharpton transportation to the February 7, 2003 fundraising event aboard the private, chartered jet that Hawkins used for commuting between Detroit and his home in Atlanta. The trip was charged to the Hawkins Food Group corporate account and the Committee did not reimburse LaVan Hawkins or the Hawkins Food Group for the cost of the transportation.⁴ Hawkins Joint Resp. at 2; LaVan Hawkins Supp. II Resp. at 1. Hawkins has argued that he did not consider the plane ride as a contribution to the Committee because Sharpton was simply allowed to fly on the plane with Hawkins on a previously planned trip. However, the fact that Hawkins was already planning to make the plane trip is irrelevant; it is the benefit provided to the Committee by not having to pay for Sharpton's travel expenses that resulted in the in-kind contribution. See Sharpton 2004 Factual and Legal Analysis at 16-17. Accordingly, there is sufficient evidence to conclude that Hawkins Food Group made a prohibited in-kind contribution of \$1,750 to the Committee, in violation of 2 U.S.C. § 441b.⁵

Hawkins Food Group was never named as a respondent in this matter, and ceased to exist soon after LaVan Hawkins was indicted. LaVan Hawkins Supp. Resp. at 2. At

⁴ Though Hawkins considers the travel aboard the chartered jet to be personal because it was unrelated to Hawkins Food Group business, Hawkins does not believe that he reimbursed Hawkins Food Group for the cost of Sharpton's airfare because it was not his standard practice to repay the company for personal travel invoiced and paid on the company's account. LaVan Hawkins Supp. II Response at 1.

⁵ Respondents provided no invoices for this specific trip so we estimated the cost of the trip by taking the airfare that the chartered jet company typically billed Hawkins for similar trips from Detroit to Atlanta and dividing it in half (\$3,509 x 50%=\$1,750), since Sharpton and Hawkins were the only two passengers on that flight. Thereby, arriving at an estimated value of \$1,750 for the airfare.

that time, its assets were seized and it has since remained a dormant entity without officers, assets, address, custodian of records or agents acting on its behalf. *Id.* Given the fact that Hawkins Food Group is defunct and its principal, LaVan Hawkins, is currently incarcerated and without resources, the Commission determined, as a matter of prosecutorial discretion, to take no action against the Hawkins Food Group.